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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/791,877	03/04/2004	Rebecca Snow	1128.2650002/TGD/RLP	4811

26111 7590 07/19/2005

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WASHINGTON, DC 20005

EXAMINER
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NAKARANI, DHIRAJLAL S

ART UNIT	PAPER NUMBER
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1773

DATE MAILED: 07/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/791,877

**Applicant(s)**

SNOW, REBECCA

**Examiner**

D. S. Nakarani

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 April 2005.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-9,12-16,40 and 41 is/are pending in the application.  
4a) Of the above claim(s) 12,13,15,16,40 and 41 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1,2 and 4-9 is/are rejected.  
7) ☒ Claim(s) 14 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. Newly submitted claims 40 and 41 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claims 1, 2 and 4-9 are generic to a plurality of disclosed patentably distinct species comprising a molded article custom-fitted to a portion of a human body classified in class 602 subclass 7+ and claim 41 is directed to a helmet and to helmet inset. Therefore it is also different species. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 40 and 41 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

2. Applicant's election with traverse of Group I, claims 1, 2, 4-9 and 12-16, now claims 1, 2, 4-9, 12-16, 40 and 41, with elected species of claims 14 namely helmet, in

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the reply filed on April 8, 2005 is acknowledged. The traversal is on the ground(s) that claim 1 is generic to all species, and upon allowance thereof reconsideration of withdrawn claims 12, 13, 15 and 16. Applicant also states that new claims 40 and 41 also read on elected group. This is not found persuasive because the Examiner agrees that an allowance of generic claim 1, all non-elected species will be considered. However if generic claim is not allowed, non-elected species will not be considered. New claim 40 is directed to a new species. New claim 41 includes non-elected species. On allowance of generic claim 1 all non-Elected species will be considered.

The requirement is still deemed proper and is therefore made FINAL.

3. Claims 12, 13, 15, 16, 40 and 41 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on April 8, 2005.

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1, 2 and 4-9 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Becker et al (U.S. Patent 5,041,319) in view of Havens et al (U.S. Patent 4,848,566) and Shirato et al (U.S. Patent 6,090,479) for the reasons of record set forth in paragraph 12 of the Office Action mailed December 09, 2004 (Paper No. 20041115).

6. Claim 14 stand objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Applicant's arguments filed April 08, 2005 have been fully considered but they are not persuasive. In reference to rejection of claims 1, 2 and 4-9 under 35 USC §103(a) as being obvious over Becker et al (US Patent 5,041,319) in view of Haven et al (US Patent 4, 848,566) and Shirato et al (US Patent 6,090,479), applicant mainly argue that Becker et al teach polyolefin foam containing antistatic agent known as "pink poly" for protecting components having conductive leads from electrostatic discharge during handling, packaging and shipping of electronic devices and components. Becker et al do not teach the use of foamed ethylene vinyl acetate and an antistatic agent. Havens et al teach against the use of the particular material such as "pink-poly" and foamed article. Havens et al teach the use of an unfoamed layer of ethylene vinyl acetate and an antistatic agent. Shirato et al teach the use of a slow recovery foam product for various purposes, such as forming sealant between surfaces and other space filling functions. For the same reasons, there would be no motivation to combined the teachings of the Shirato et al reference with the Havens et al reference, since Haven et al teach against the use of foam padding such as taught by Shirato et al.

These arguments are unpersuasive because Havens et al do not teach against the use of the foamed article. Havens et al only teach against use of internal

polyethylene foam pads in the container. Havens et al are silent about whether their container is foamed or unfoamed. There is nowhere Havens et al suggest that foamed container can not be used. Havens et al do not disclose that layer (12) of the container is foamed. Furthermore Havens et al used to show antistatic agent of present invention are used in the polyolefin and the term "polyolefin" includes polymers and copolymers of ethylene, propylene etc. Havens et al show polyolefin such as linear low-density polyethylene and ethylene vinyl acetate. Shirato et al show a foamed product made of polyolefin such as polyethylene, polypropylene and ethylene vinyl acetate copolymers. Thus Havens et al and Shirato et al show equivalent use of polyethylene, ethylene-vinyl acetate copolymer. Becker et al's generic term "polyolefin" encompasses polyethylene, polypropylene, ethylene-vinyl acetate copolymer etc.

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

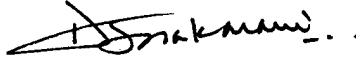
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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. S. Nakarani whose telephone number is (571) 272-1512. The examiner can normally be reached on Tuesday-Friday from 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on (571) 272-1284. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

D. S. Nakarani/af  
July 7, 2005

  
**D. S. NAKARANI**  
**PRIMARY EXAMINER**